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IN THE

Supreme Court of the United States

October Term, 1969
No. 301

LOREN J. PIKE, as Supervisor of Inspection, Arizona Fruit and Vegetable Standardization Service,
Appellant,

vs.

BRUCE CHURCH, INC., a California corporation,
Appellee.

On Appeal From the United States District Court for the District of Arizona.

BRIEF OF WESTERN GROWERS ASSOCIATION AS AMICUS CURIAE.

By Leave of this Court, Western Growers Association files this Brief as *amicus curiae.*

Interest of the Amicus Curiae.

Western Growers Association is a non-profit trade association composed of growers and shippers of vegetables and melons in the States of California and Arizona and whose members produce 80% of the vegetables and melons grown in those States. One of the primary objects of the Association has been and now is to support and advance the Standardization Acts of both

these States. The fact that these two States produce more than 49% of the total volume of these commodities grown in the United States and the fact that they can market more than 50% of their production East of the Mississippi, during a part of the year competing directly with "home grown" vegetables and melons, is at least partially due to the enactment and enforcement in Arizona and in California of high standards for culling, grading, sizing, and packing of these products which protect the consumer and enhance the reputation of these States for quality vegetables and melons.[1] These standards that have been in effect for more than a generation are placed in jeopardy by the decision of the Court below.[2]

Summary of Argument.

(1) State Standardization Acts for fruits and vegetables have a reasonable relation to a legitimate purpose to be accomplished by a state and as such constitute a valid exercise of the police power. State Standardization Laws for fruits and vegetables have been among the

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[1]Fresh Fruit and Vegetable Shipments, Calendar Year 1968 Consumer and Marketing Service, U.S. Dept. of Argiculture. Fruit and Vegetable Division, Market News Branch.

[2]The present California Fruit, Nut, and Vegetable Standardization Act was enacted by California Statutes of 1931 Chapter 703. Prior to that, California had various Standardization Acts for fruits and vegetables enacted 1901, 1903, 1915, 1917, and 1927. The legislative purpose of the present 1931 Act is to prevent fraud and deception and to protect the general welfare by establishing standards and standard containers and to regulate the packing, marketing, and disposal of fruits, nuts and vegetables.

earliest and most common exertions of the police power by the various states and over the years the valid scope of these regulations have been much extended. *Pacific States Box & Basket Co. v. White,* 296 U.S. 176 (1935); *Turner v. Maryland,* 107 U.S. 38, 51-54 (1883). Regulations within the range of the police power cannot be declared invalid unless it can be said that they bear no reasonable relation to a legitimate purpose to be accomplished by their enactment. *Sligh v. Kirkwood,* 237 U.S. 52 (1915).

(2) State Standardization Acts which regulate the quality of fruit and vegetables marketed in and from their state of origin and the containers in which they are to be shipped do not improperly burden interstate commerce. They constitute proper local regulations which a State may enact unless and until Congress exercises its authority on the subject. "This subject has been so frequently dealt with in decisions of this Court that an extended review of the authorities is unnecessary." *Sligh v. Kirkwood, supra.* Ever since *Willson v. Blackbird Creek Marsh Co.,* 2 Pet. 245 and *Cooley v. Board of Port Wardens,* 12 How. 299, it has been recognized that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce but which, because of their local character and their number and diversity, may never be fully dealt with by Congress. Notwithstanding the commerce clause, such regulation, in the absence of congressional action, has for the most

part been left to the states by the decisions of the United States Supreme Court. *South Carolina State Highway Department v. Barnwell,* 303 U.S. 177, 185 (1938).

(3) The requirement that the cantaloupes be packed in closed standard containers is an essential part of a Standardization Act. If cantaloupes are shipped out of the State, loose and in bulk, as they come from the field, the State not only loses its ability to enforce packing standards but also its ability to enforce quality standards.

(4) The cases relied upon by Appellee are restricted to either (a) statutes or regulations nominally of local concern but in point of fact aimed at interstate commerce or (b) statutes or regulations having no reasonable relation to a legitimate purpose to be accomplished by this enactment or (c) cases in which the Federal Government has preempted the field.

ARGUMENT.

I.

The Act and the Order of the Supervisor of Inspections Thereunder Is a Valid Exercise of the Police Power of the State.

In *Pacific States Box & Basket Co. v. White,* 296 U.S. 176 (1935), an action was brought in Federal District Court to enjoin an order of the Department of Agriculture of the State of Oregon entitled: "Standard Containers For Fruits and Vegetables". Justice Brandeis, in speaking for a unanimous Court, states:

> "First. The power of a state to prescribe standard containers in order to facilitate trading, to preserve the condition of the merchandise, to protect buyers from deception, or to prevent unfair competition, is conceded. Such regulation of trade is a part of the inspection law; was among the earliest exertions of the police power in America; has been persistent; and has been widely applied to merchandise commonly sold in containers. See *Turner vs. Maryland,* 107 U.S. 38, 51-54.[3] Latterly, with the broadening of the fields of distribution and the growing use of containers in the retail trade, the scope of the regulation has been much extended." (Page 181 of the Opinion).

In that case, the plaintiff did not question the reasonableness of the standard so far as it prescribed the capacity of the box or basket but challenged the fixing of

[3] *Turner v. Maryland* cites in footnotes four pages of state statutes regulating the form, capacity, dimensions and weights of containers in which articles of commerce must be packed and sold.

the dimensions and the form of the container. This Court, nevertheless, sustained the power of the State to regulate this.

In *Pacific States Box & Basket Co.* case, this Court also emphasized the presumption in favor of the validity of such legislative action, stating:

> "The order here in question deals with a subject clearly within the scope of the police power. When such legislative action is called in question, if any state of facts reasonably can be conceived that would sustain it, there is a presumption of the existence of that state of facts and one who assails the classification must carry the burden of showing by a resort to common knowledge or other matters which may be judicially noticed, or to other legitimate proof, that the action is arbitrary. *Borden Farm Products Co., Inc. vs. Baldwin,* 293 U.S. 194, 209." (Page 185 of Opinion).

Finally, in the *Pacific States Box & Basket Co.* case, this Court held that the same presumption of validity which attaches to the acts of the legislature also attaches to the acts of the person delegated authority to make regulations or orders thereunder:

> "But where the regulation is within the scope of authority legally delegated, the presumption of the existence of facts justifying its specific exercise attaches alike to statutes, to municipal ordinances, and to orders of the administrative bodies." (Page 186 of Opinion).[4]

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[4]In the Statute before the Court in this matter the Statute, itself, requires the containers to be closed and delegates to the Supervisor the approval of containers to be used.

In *Sigh v. Kirkwood,* 237 U.S. 52 (1915) this Court held:

> "Furthermore, this regulation cannot be declared invalid if within the range of the police power unless it can be said that it has no reasonable relation to a legitimate purpose to be accomplished in its enactment." (page 61 of Opinion).

Applying the law in the above cases to the facts in the case now before the Court, the conclusion cannot be escaped that a standardization act regulating the quality, pack, and container for fruits and vegetables is within the basic police power of the State, that it is presumed to be enacted for a legitimate purpose and that this presumption attaches to the regulations and orders issued thereunder. The burden is upon the person attacking the act or order to show that it is arbitrary or not designed to achieve a legitimate purpose of the State.

The police power of the State is not limited to the protection of public health, morals, and safety. The exercise of the power may include legislation to develop the resources of the State and add to its welfare and prosperity. *Sligh v. Kirkwood, supra,* at page 59; *Bayside Fish Flour Co. v. Gentry,* 297 U.S. 422 (1936).

In *Bayside Fish Flour Co. v. Gentry, supra,* a California corporation was engaged in the manufacture of fish flour from sardines. It sought to enjoin a State law which prohibited the reduction of edible portions of sardines to fish flour. This Court held:

> "If the enforcement of the Act affects interstate commerce, that result is purely incidental, indirect, and beyond the purposes of the legislation. The

provisions of the act assailed are well within the police power of the state, as frequently decided by this and other Courts." (Opinion Page 426).

This Court stated, in the *Bayside Fish Flour Co.* case that "Appellant places great reliance upon *Foster Packing Co. v. Haydel,* 278 U.S. 1". This Court, however, distinguished the *Foster Packing Co.* case, pointing out that while the ostensible purpose of the Louisiana Statute in that case was to conserve the raw shells for local use, such purpose was feigned and that the real purpose of the Statute was aimed at restricting interstate commerce.

II.

The Act and the Order of the Supervisor of Inspection Thereunder Do Not Improperly Burden Interstate Commerce.

This Court upheld the validity of the Florida Statute making unlawful the shipment of citrus fruits which are immature or unfit for consumption as early as 1915. *Sligh v. Kirkwood,* 273 U.S. 52 (1915). That case was an appeal from a criminal conviction for having delivered immature fruit for shipment in interstate commerce contrary to such Statute. Counsel for plaintiff in error argued (1) that the Act in question was not a justifiable exercise by the State of its police power and (2) the Act seeks to limit, regulate, and control interstate commerce and is directly in conflict with the Constitution of the United States. (Argument of counsel set forth in 59 L. ed. 836).

Basically, this Court, in that case, ruled as follows:

(1) A State may regulate the shipment in interstate commerce of citrus fruits which are immature

or unfit for consumption until Congress exercises its supreme authority over the subject;

(2) Such legislation is a valid exercise of the police power of the State.

(3) Such Act only incidentally and indirectly affects interstate commerce.

The Court first pointed out that Congress has the exclusive power to regulate interstate commerce and that when such authority is exerted, a state, even in the exercise of its police power, may not interfere with the supreme authority of Congress over the subject. (Page 58 of Opinion). The Court pointed out, however, that no Act of Congress had been called to its attention undertaking to regulate shipments of this character (Page 62 of Opinion). Similarly, in the instant case, if Congress should undertake to write an overall Standardization Act which preempted this field, such Act and the orders thereunder, so far as they pertain to cantaloupes destined for interstate commerce, would be exclusive. No such Act of Congress exists.

In the above case, this Court goes on to hold that while a state may not interfere with the supreme authority of Congress over the subject:

> "this Court from the beginning has recognized that there may be legitimate action by the state in the matter of local regulation, which the state may take until Congress exercises its authority upon the subject. This subject has been so frequently dealt with in decisions of this court that an extended review of the authorities is unnecessary." (Page 58 of Opinion).

In *Sligh v. Kirkwood, supra,* this Court took judicial notice of the fact that the raising of citrus fruits is one

of the great industries of Florida and "that it was essential for the success of that industry that its reputation be preserved in other states wherein such fruits find their most extensive market". (Page 61 of Opinion). Almost these identical words are applicable to the case now before this Court.[5]

In *Parker v. Brown,* 317 U.S. 361 (1943) an action was brought to restrain the enforcement, as to plaintiff, of a raisin marketing program adopted under the California Agricultural Prorate Act. A statutory three-judge district court enjoined the enforcement, as to plaintiff, of the prorate program and W. B. Parker, Director of Agriculture of the State of California, appealed therefrom to this Court. The primary question involved was whether the Act and the actions of the Director thereunder violate the Commerce Clause of the Constitution of the United States. (Argument of Appellant set forth in 87 L. ed. 319, 320).

In that case, Justice Stone, speaking for a unanimous Court, held:

> "This Court has repeatedly held that the grant of power to Congress by the Commerce Clause did not wholely withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken." (Page 360 of Opinion).

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[5]The value of vegetables and melons grown in the States of California and Arizona during the year 1967 was $479,644,000.00. *Agricultural Statistics 1968*, a publication issued by the U.S. Department of Agriculture, Table 224. The value of cantaloupes grown in the States of California and Arizona during the year 1967 was $52,535,400.00. This constituted 69.44% by value of all the cantaloupes grown in the United States idem. Table 241.

The Court, in that case, discussed and cited those cases in which the state power to act was not void when there is some manufacturing, even of slight extent, before the products enter interstate commerce. *Federal Compress & Warehouse Co. v. McLean,* 291 U.S. 17, 21, *Crescent Cotton Oil Co. v. Mississippi,* 257 U.S. 129. It cited as a similar case *Sligh v. Kirkwood, supra.* The case now before this Court may well come within the ambit of such decisions.

But the Court, in the *Parker* case, did not limit the validity of local regulations necessarily to situations in which there was some processing before the product goes in interstate commerce:

> "But courts are not confined to so mechanical a test. When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved." (Page 362 of Opinion).

This Court in the *Parker* case did not limit its decision to whether the burden upon interstate commerce was indirect rather than direct but went to basic criteria, stating that the regulations would be upheld as a proper exercise of the police power and not a burden upon interstate commerce if:

> "upon a consideration of all of the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health, and well being of local

communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress. Because of its local character also there may be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause." (Opinion Pages 362 and 363).

In *South Carolina State Highway Department v. Barnwell,* 303 U.S. 177 (1938) an action was brought to enjoin the State Highway Department and others from enforcing a Statute imposing restrictions on the use of highways by certain types of trucks. The three-judge district court granted the injunction and this Court reversed. This Court pointed out that it had often sustained state weight limitations and highway limitations although such regulation has burdened or impeded interstate commerce. "But so long as the state action does not discriminate, the burden is one which the Constitution permits because it is an inseparable incident of the exercise of the legislative authority, which, under the Constitution, has been left to the states". (Page 189 of Opinion).

Thus, in the above case, this Court said that in reviewing the determination of the court below:

"We examine the record, not to see whether the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say that the legislative choice is without rational basis." (Opinion Pages 191 and 192).

III.

The Requirement That the Cantaloupes Be Packed in Closed Standard Containers Is an Essential Part of the Standardization Act.

The opinion of the Court below states that it was the intention of Appellee to harvest its melons in Arizona and haul them in bulk to California (Page 59 of Appendix). This violates an express provision of the Act which requires that all cantaloupes shall be packed in closed standard containers.[6]

The reason for this requirement is obvious and valid. Compliance with grade and quality standards for cantaloupes is required by the Act. For example, they must be mature, not overripe; they must be fairly well netted; free from mold, decay and insect damage which has penetrated the edible portion of the cantaloupes; and free from serious damage due to bruises, sunburn, growth cracks, etc.[7] There are further provisions regulating the number of cantaloupes in the container and what is to be marked on the container.[8] There would be no way of enforcing these provisions except as there are also enforceable provisions that the cantaloupes be marketed in closed standard containers.

Whether the cantaloupes are sold in intrastate or interstate commerce these same requirements apply. Whether the grower of the cantaloupes is a citizen of Arizona or of another State, or is an Arizona corporation or a foreign corporation, if the cantaloupes are grown in Arizona these same requirements apply. Each requirement constitutes a legislative judgment of stand-

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[6]Arizona Revised Statutes, Section 3-503, C.
[7]Arizona Revised Statutes, Section 3-503, A.
[8]Arizona Revised Statutes, Section 3-503, E.

ards that will promote public welfare and the general prosperity and welfare of the State. Each and every provision of the Act is adopted for this purpose. No part of it is discriminatory to non-citizens of Arizona; no part of it has an ulterior or feigned motive; no part of it is aimed at discouraging or burdening interstate commerce; and all of the Act applies equally to cantaloupes destined for intrastate and interstate commerce.

IV.

The Cases Relied Upon by Appellee and Cited by the Court Below Are Not Applicable.

It is our contention and belief that the cases cited by the Court below in support of its opinion "that the order complained of constitutes an unlawful burden upon interstate commerce", and those cases cited to the Court below by Appellee in support of that contention, are based on facts that do not exist in the instant case.

The Court below cited, in support of its decision, *Foster-Fountain Packing Co. v. Haydel,* 278 U.S. 1 (1928) and *Johnson v. Haydel,* 278 U.S. 16 (1928) Appellee cited a similar case, *Toomer v. Witsel,* 334 U.S. 385 (1948), in support of the decision of the Court below.

In *Foster-Fountain Packing Co. v. Haydel, supra,* Appellants were engaged in the business of catching and canning shrimp for shipment and sale in interstate commerce and Appellees were public officials in Louisiana charged with the duty of enforcing an Act known as the "Shrimp Act". The Appellants contested the validity of the Act alleging that it was a burden upon interstate commerce. The Act declared all shrimp and parts thereof in Louisiana waters to be the prop-

erty of the state and specified that the person who lawfully takes shrimp from the waters is granted the right to sell it beyond the limits of the state "when the tail meat is removed within the state". Similarly, the Act provided that the raw shells and hulls may not be shipped out of the State until they are made into fertilizer or chicken feed. This Court, at page 10, held:

> "The facts alleged in the Complaint, the details set forth in the plaintiffs' affidavits and the provisions of the Act to be restrained show that the conservation of hulls and heads *is a feigned and not the real purpose.*" [Emphasis added].

Johnson v. Haydel, supra, involving the Louisiana Oyster Act, was a companion case where the same results were reached upon the same state of facts.

The Appellee in the Court below relied upon *Toomer v. Witsel, supra.* This was an action to enjoin as unconstitutional the enforcement of several South Carolina Statutes governing commercial shrimp fishing in the three-mile maritime belt off the coast of that State. The three-judge Federal District Court upheld the Statutes but on appeal this Court held the Statutes invalid. The fishery which South Carolina attempted to regulate by the Statutes in question was a part of a larger shrimp fishery extending from North Carolina to Florida and most of the shrimp were of a migratory type. South Carolina enacted several regulations in order to make the fishing off its waters easier for its citizens and aimed at citizens of other States that came within its waters.

One of these provisions was that the license fee for a South Carolina resident was $25 for each shrimp

boat but the license fee for a boat owned by a non-resident was $2500. While this particular provision of the Statute is not relevant to our case, it tends to show the overall purpose of the Statutes.

The portion of the Statute that has been cited to the court below provided that the shrimp boats fishing in the maritime belt off South Carolina were required to dock at a South Carolina port and unload, pack, and stamp their catch before shipping or transporting it to another State. The Court held that this imposed "an artificial rigidity on the economic pattern of the industry". (Opinion Pages 403 and 404).

Justice Rutledge, in a concurring opinion, noted:

> "The requirement that owners of boats fishing in the maritime belt dock at a South Carolina port, unload, pack, and stamp their catch (for tax purposes), before 'shipping or transporting it to another State' is not merely a regulation of commerce burdening it in the sense of materially increasing the shippers' costs. Many valid regulations of commerce do this. The regulation in question goes further. *It is aimed in terms directly at interstate commerce alone* and thus would seem to be discriminatory in intent and effect upon that commerce." (Opinion Pages 409 and 410) [Emphasis added].

The above-cited cases come within the exception to the general rule. The general rule is that a state Statute in the exercise of the police power of the state is a legislative judgment and is presumed to be valid unless, upon the whole record, it is found to be without rational basis. (*Pacific States Box & Basket Co. v. White,*

supra, and *South Carolina State Highway Department v. Barnwell Bros., supra*). The exception, set forth in the cases discussed above, is that the court may find that the purported reason for the Statute is feigned and that it is really aimed at interstate commerce.

The Court below also relied upon the cases of *Shafer v. Farmers' Grain Co.*, 268 U.S. 189 (1925) and *Lemke v. Farmers' Grain Co.*, 258 U.S. 50 (1922). These cases have already been distinguished by this Court in *Parker v. Brown*, 317 U.S. 361 (1943). In that case, in which the raisin marketing program of the State of California was upheld, this Court stated:

> "The regulation is thus applied to transactions wholely intrastate before the raisins are ready for shipment in interstate commerce."
>
> "It is for this reason that the present case is to be distinguished from *Lemke vs. Farmers' Grain Co.* and *Shafer vs. Farmers' Grain Co.* on which Appellee relies. There, the state regulation held invalid was of the business of those who purchased grain within the state for immediate shipment out of it. The Court was of the opinion that the purchase of the wheat for shipment out of the state without resale or processing was a part of interstate commerce. Compare *Chassaniol vs. Greenwood, Supra.*" (Opinion Pages 361 and 362).

In addition, Appellee in the Court below relied upon *Baldwin v. Seelig, Inc.*, 294 U.S. 511 (1935) and *Polar Ice Cream and Creamery Co. v. Andrews*, 375 U.S. 361 (1964).

The *Baldwin* case involved the constitutionality of the New York Milk Control Act. The Act set up a

system of minimum prices to be paid by dealers to producers. It sought to apply this to purchases without the state, in this instance, in Vermont, by providing that "there shall be no sale within the state of milk bought outside unless the price paid to the producers was the one that would be lawful upon a like transaction within the state". While it was admitted that New York had no power to regulate the price paid for milk in Vermont, it was contended by the state that it could forbid the sale of that milk in New York if it was bought at a lower price outside the state. The Court states:

> "Such a power, if exerted, will set a barrier to traffic between one state and another as effective as if customs duties, equal to the price differential, had been laid upon the thing transported." (Page 521 of Opinion).

The Court pointed out that the:

> "avowed purpose of the obstruction as well as its necessary tendency, is to suppress or mitigate the consequences of competition between the states." (Page 522 of Opinion).

Polar Ice Cream & Creamery Co. v. Andrews, supra, involved a situation in Florida where plaintiff purchased approximately 70% of its milk requirements from producers from other states than Florida. Under a three pronged regulatory structure of the Florida Milk Commission, plaintiff was required to accept its total supply of Class I milk, military milk aside, from designated Pensacola producers at a fixed price. As a result, it could not take this type of milk from producers in

other states. The Court held that this matter was controlled by the case of *Baldwin v. Seelig, supra,* and similar cases.

In summary, as to these two milk cases relied upon by Appellee, "the avowed purpose" as well as the necessary tendency of these Acts is to suppress or mitigate the consequences of competition between the States.

Basically, in determining whether the cases relied upon by Appellee are applicable to the instant case, this Court will have to determine whether the Statute and order in question have a reasonable relation to a legitimate purpose to be accomplished in their enactment or whether that purpose is feigned and its true purpose is to burden interstate commerce. *Bayside Fish Flour Co. v. Gentry, supra.* It is not enough to invalidate a statute to determine that a regulation incidentally affects interstate commerce when the object of the regulation is not to that end. *Sligh v. Kirkwood,* 237 U.S. 52, 60. Under the circumstances of this case, the legislation will be stricken down only if this Court finds that, upon the whole record, the legislative choice is without rational basis. *South Carolina State Highway Department v. Barnwell Bros.,* 303 U.S. 177, 191 and 192.

Conclusion.

Under point I, II, and IV of this Brief, we have discussed whether the Arizona Standardization Act and the order of the Supervisor of Inspection of the Arizona Fruit and Vegetable Standardization Service con-

stituted (a) valid exercise of the police power of that State (b) not contrary to the Commerce Clause of the United States Constitution. In fact, these points are intertwined.

A summary of our position on these points of law is as follows:

(1) If any state of facts reasonably can be conceived that would sustain the validity of the Statute and the order by its enforcing officer, there is a presumption of the existence of those facts (*Pacific States Box & Basket Co. v. White, supra*).

(2) The determinaion of the legislature in enacting this legislation will not be set aside unless, upon the whole record, the legislative choice is without rational basis (*South Carolina State Highway Department v. Barnwell Bros., supra*).

(3) Conversely, this matter does not come within the cases relied upon by the court below or cited by the Appellee which hold that a regulation does not come within the range of the police power when it has no reasonable relation to a legitimate purpose to be accomplished in its enactment or where in fact its stated purpose is feigned (See *Sligh v. Kirkwood, supra,* at Page 61 of Opinion distinguishing such cases);

(4) The Court below, in its opinion, does not cite or rely upon any enunciation by Congress of a national policy as to the regulation of the quality or pack of fruits and vegetables and none exists (*Sligh v. Kirkwood, supra*).

(5) The Statute here involved applies to the requirements of further processing of the cantaloupes (sorting, grading, and packing) prior to their entering interstate commerce and as such the Statute is not for-

bidden by the United States Constitution (*Sligh v. Kirkwood, supra; Federal Compress & Warehouse Co. v. McLean, supra; Chassaniol v. City of Greenwood, Mississippi, supra*);

(6) Conversely, the statute does not come within the line of cases where the state statute takes effect at a time when no preshipment processing is to be performed (*Parker v. Brown, supra* at Pages 361 and 362 where such cases are distinguished).

(7) Notwithstanding the Commerce Clause of the Constitution, this Court has long recognized that states may, under a proper exercise of their police power, make regulations which unavoidably involve regulation of interstate commerce, but which because of their local character and their number and diversity are not and may never be fully dealt with by Congress (*South Carolina State Highway Department v. Barnwell Bros., supra*).

(8) Conversely, this matter does not come within the cases relied on by the court below or cited by Appellee in which the legislation, while nominally of local concern, is in point of fact aimed at interstate commerce and in fact discriminates against interstate commerce (*South Carolina State Highway Department v. Barnwell Bros., supra* at Page 186 where such cases are distinguished).

It is respectfully submitted that the judgment of the lower court should be reversed.

Respectfully submitted,

GEORGE C. LYON of
HAIGHT, LYON & SMITH,
Counsel for Western Growers Association, as amicus curiae.